THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No.496 of 2001

Date: 31.10.2007

Between:

M/s. Hemanth Mines & minerals, rep. by its Managing Partner B.V.Subba Rao

……PETITIONER(S)

a n d

1. Government of Andhra Pradesh, Industries and Commerce (M.II) Department, rep. by its Secretary to Government, Secretariat, Hyderabad and others

……RESPONDENT(S)

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No.496 of 2001

ORDER:

The case, in brief, of the petitioner is that on an application filed by it to the Director of Mines and Geology, Hyderabad (the second respondent), he, vide his proceedings dated 03.12.1994, granted quarry lease for 15 years in an extent of 4.000 Hectares in S.No.58 of Budawada village of Chimakurthy Mandal, Prakasam District, to it. Thereafter, he issued a show cause notice as to why its security deposit cannot be forfeited for its failure to erect boundary pillars and not paying the Advance Dead Rent for the year 1996-97, for which it submitted an explanation stating that it erected boundary pillars on all the four sides of the land and had paid the Advance Dead Rent on 13.03.1997 itself, vide the challan numbers mentioned, and when its officers visited the office of the second respondent they were informed that the date of hearing would be intimated to them later and so they thought that they would have to appear before the second respondent only after receipt of notice of hearing. But, it received proceedings determining the lease granted in its favour and forfeiting the security deposit on 29.04.2000, questioning which it filed a revision before the first respondent who through the memo No.9824/M.II(1)/200-9 dismissed its revision even without affording an opportunity of being heard to it.

2. Third respondent filed his counter affidavit on behalf of the respondents *inter alia* admitting the petitioner being granted lease

in respect of 4.000 Hectares in S.No.58 of Budawada village of Chimakurthy Mandal, Prakasam District, for a period of 15 years and contending that inasmuch as the petitioner in violation of condition (iii) of sub-clause (f) of

sub-rule 8 Rule 12 of A.P. Minor Mineral Concession Rules, 1966 (for short – 'the 1966 Rules') kept the quarry idle from the date of execution of quarry lease and did not erect boundary pillars or maintain production and despatch registers and submit quarterly returns in Form-C, it amounts to violation of covenant 8(7) of lease deed read with Rule 28(3) of the 1966 Rules, and as it also did not pay the Advance Dead Rent for the year 1996-97 it violated the covenant 8(1) of lease deed read with sub-clause (2) of sub-rule 5 of Rule (e) of sub-rule 5 Rule 12 of the 1966 Rules; and condition (viii) of sub-clause (f) of sub-rule 5 of Rule 12 of the 1966 Rules; and so the Director of Mines and Geology, Hyderabad (second respondent), issued a show cause notice to the petitioner. After receiving a reply from the petitioner, the second respondent requested the Deputy Director of Mines and Geology, Guntur (4th respondent) and the Assistant Director of Mines and Geology, Ongole (5th respondent) to submit their remarks. Later, petitioner paid the dues and submitted the original challans on 13.3.1997 showing payment of Rs.38,137/- and Rs.1,47,617/- and seems to have erected boundary pillars and thus cured only two of the defects mentioned in the show cause notice. The contention of the petitioner that he requested the second respondent to give an opportunity of personal hearing is not correct. In fact, granting of personal hearing is not envisaged in the 1966 Rules. The Technical Assistant and the Royalty Inspector reported that the quarry is not working since date of execution of the lease deed and so lease granted in favour of petitioner was determined through the proceedings impugned. In fact, by the date of the filing of the petition also, the petitioner was in arrears of Rs.6,84,276/-

towards Dead Rent, Land Assessment and Interest, and so the petitioner is not entitled to any relief.

3. The contention of Sri T.Rajendra Prasad, learned counsel for petitioner, is that since the petitioner was not given an opportunity of being heard, the case may be remitted to the first respondent to dispose of the case after affording an opportunity of being heard to the petitioner. In support of his contention that petitioner is entitled to an opportunity of being heard he relied on **SAHI RAM v. AVTAR SINGH**[1]; **STATE OF HARYANA v. RAM KISHAN**[2]; and **ASSAM SILLIMANITE LTD. v. UNION OF INDIA**[3].

4. The contention of the learned Government Pleader is that inasmuch as the averment in para-4 of the affidavit filed in support of this petition shows that the counsel for the petitioner, who made his submissions before the first respondent, had offered to pay the amounts due and payable it is clear that the petitioner was heard before the order impugned was passed and since the petitioner admittedly did not operate the quarry from the date of the execution of the lease deed and did not produce the quarterly returns in Form 'C', proceedings determining the lease in favour of the petitioner cannot be called in question.

5. Para-4 of the affidavit filed in support of the petition, reads -

> "……we have appeared before the 1st respondent. At one stage, to avoid litigation we have expressed our intention to pay the dead rents and other amounts for the subsequent years also, even though we have not operated the mine. On the last adjournment dated 2.12.2000, our counsel Sri M.Haribabu appeared before the Hon'ble Minister for Mines and Geology and expressed his intention to pay amounts, whatever due, to avoid litigation and on that the matter was adjourned and it was informed to our Counsel at later point of time. But, suddenly we have received the impugned Memo No.9824/M.II(1)/200-9 dated 3-1-2001 determining our lease stating that we have not paid the dues and we

have not rectified the breaches. ……"

So, it cannot be said that the petitioner was not afforded an opportunity of being heard.

6. Non-operation of the mine from the date of lease also is admitted in the above extracted paragraph. Rule 31(xvi) of the 1966 Rules vests power in the Deputy Director of Mines to determine the lease in the case of breach of any covenant or condition contained in the grant, by the lessee or grantee, after giving an opportunity to him and to forfeit the security deposit.

7. As per Rule 17 (2) of the 1966 Rules, if the lessee is unable to commence the quarrying operations within a period of six months from the date of execution of the lease or discontinues quarrying operations for a period of six months for reasons beyond his control, he can submit an application to the Director explaining the reasons for the same atleast 30 days before the expiry of such period. As per Rule 17(3) of the 1966 Rules, every application under sub-rule (2) shall be accompanied by a fee of Rs.500/-. As per Rule 12(5)(g)(iii) of the 1966 Rules, the licensee or lessee has to pay the prospecting fee or dead rent at the time of execution of licence or lease deed and one month in advance for the subsequent years every year along with land assessment and cess on land assessment.

8. As per the show cause notice issued to the petitioner, its licence was sought to be cancelled on the following grounds,

> "1. The lessee has kept the quarry idle since execution of quarry deed and is violation of condition (III) of Sub-clause (p) of Sub-rule 5 Rule 12 of APMMC Rules, 1966.
>
> 2. The lessee has not erected boundary pillars around the leased area.
>
> 3. The lessee has not maintained production and

despatch registers and not submitted quarterly returns in Form 'C' which is a violation of covenant 8(7) of lease deed read with Rule 28(3) of APMMC Rules, 1966.

4. The lessee has not paid advance dead rent for the year 1996-97."

9. In the counter affidavit filed on behalf of the respondents, it is admitted that the petitioner paid R.38,137/- and Rs.1,47,617/- on 13.3.1997 for the year 1996-97. Petitioner, admittedly, did not pay any amount for the subsequent years though it is alleged that by the date of filing of the writ petition, an amount of Rs.6,84,276/- is due from the petitioner. That fact is also not denied by the petitioner by filing a reply affidavit. So, it is clear that petitioner fell in arrears of Advance Dead Rent etc., payable one month in advance as per Rule 12(5)(g)(iii) of the 1966 Rules.

10. Though as per Rule 17(2) of the 1966 Rules if the mining is not commenced within six months the lease is terminable petitioner, admittedly, did not commence the mining till the date of hearing of this petition.

11. Since petitioner failed to commence the mining and also committed default in payment of rents in view of the above rule position, the respondents terminating the lease in favour of the petitioner, after affording an opportunity of being heard to it, cannot be said to be erroneous.

12. The contention that the petitioner was not afforded an opportunity of being heard cannot be accepted because a show cause notice was issued to it. Rule 31(3)(xvi) of the 1966 Rules does not contemplate any personal hearing being given to the lessee. So, merely because the third respondent did not give an opportunity of personal hearing to the petitioner, the petitioner cannot be said to be aggrieved, when that opportunity of personal

hearing was given to it by first respondent before whom it preferred an appeal, where no plea that it was aggrieved by the third respondent not affording a personal hearing was taken.

13. The order impugned clearly mentions the reasons for cancellation of the licence and so the decisions relied on by the learned counsel for the petitioner have no application to the facts of this case and so I see no ground to remit the case to the first respondent for fresh hearing and find no merits in the writ petition.

14. Hence, the writ petition is dismissed. No costs.

31.10.2007

Cvrk

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[1] AIR 1999 DELHI 96
[2] AIR 1988 SC 1301
[3] AIR 1990 SC 1417